

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

May 29, 1990

Mr. P--- F---
XXX --- Way
---, CA XXXXX

RE: SR – XX-XXXXXX

Dear Mr. F---:

This is in reply to your April 18, 1990 letter to Tax Counsel John Abbott regarding the application of sales tax to your charges for work you perform on videotapes.

You note that you understand that the charge for a video production, which you describe as a qualified motion picture from script through production of the master reel on ¾" or 1" videotape, is nontaxable. The master reel is not used for any purpose other than dubbing to a reel used for exhibition of the production. You were advised by a representative of the Board's branch office in --- county that tax applies to you charge for the reel used to created the final master of a production. You asked for our opinion.

Enclosed is a copy of Sales and Use Tax Regulation 1529, Motion Pictures, as amended effective September 22, 1988. Under subdivision (b)(1)(C) of the regulation, tax does not apply to the transfer of all or part of a qualified motion picture when the transfer is prior to the exhibit or broadcast date. A "qualified motion picture" is generally any motion picture or videotape produced for a commercial purpose. The term excludes motion pictures produced for private noncommercial use. (Reg. 1529, subd. (b)(1).) We assume that all of the videotape productions in question are qualified motion pictures. You are correct that tax does not apply to your charge for the videotape production which you transfer on a master reel. In fact, if you transfer the production on a videotape which is of a quality suitable for exhibition, that first videotape is a "principal" release print, and tax does not apply to your charge for that videotape. (Reg. 1529, subd. (b)(3)(B).) You are the consumer of all tangible personal property which you consume in making that videotape, and tax applies to the sale to you of such tangible personal property including the raw videotape stock, artwork, and other manufacturing aides which you use in making the production. (Reg. 1529, subd. (a)(1).)

You note that you are charging tax reimbursement on your charges for submasters which you make for purposes of exhibition but not for submasters you make as protection copies for use in making exhibition submasters. As noted in subdivision (b)(3)(A) of the regulation, tax applies to charges for release prints such as the submasters you make for exhibition purposes. We suggest that for sales tax purposes, you call such submasters "broadcast dubs" or "air dubs" as provided at subdivision (d)(11)(A) of the regulation to distinguish the product from the "submasters" listed at subdivision (d)(11)(B) of the regulation which are not considered to be release prints but are, rather, the product of "qualified production services" as defined at subdivision (b)(2) of the regulation. Tax does not apply to charges for videotapes which you produce as a result of performing qualified production services. The submaster you make for use as a protection copy is an example of such a videotape.

You note that you charge tax reimbursement on all your charges for "VHS dubs" which you note is the end product for most of your clients, and all your supervisory time you spend to organize the dubbing. We agree that, if the VHS dub is a release print, tax applies to the total gross receipts from your sale except as noted above regarding charges for principal release prints.

We hope this answers your questions; however, if you need further information, feel free to write again.

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr

Enc.